



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

Docket No. USCG-2012-0198

RIN 1625-AA00

Safety Zone, Port of Dutch Harbor; Dutch Harbor, AK

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes temporary safety zones in the Port of Dutch Harbor, Alaska, and adjacent U. S. territorial sea from 12:01 a.m. local time on June 15, 2012, through 11:59 p.m. on July 1, 2012. The temporary safety zones will encompass the navigable waters within a 25-yard radius of moored or anchored offshore exploration or support vessels, and the navigable waters within a 100-yard radius of underway offshore exploration or support vessels. The purpose of the safety zones is to protect persons and vessels during an unusually high volume of vessel traffic in the Port of Dutch Harbor, Alaska, and the adjacent territorial sea due to additional vessel traffic associated with exploratory drilling operations in the Chukchi and Beaufort seas during the summer of 2012.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF

PUBLICATION IN THE FEDERAL REGISTER].

Requests for public meetings must be received by the Coast Guard on or before [INSERT DATE 7 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2012-0198 using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail: Docket Management Facility (M-30), U.S.

Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.

(4) Hand delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail LTJG Olivia Jones, Sector Anchorage Enforcement Division, Coast Guard; telephone 907-271-6741, e-mail Olivia.S.Jones@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

Submitting comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2012-0198), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via <http://www.regulations.gov>) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via www.regulations.gov, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document

Type" drop down menu select "Proposed Rule" and insert "USCG-2012-0198" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8 1/2 by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG-2012-0198" and click "Search." Click the "Open Docket Folder" in the "Actions" column.

You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

Public meeting

The Coast Guard does not plan to conduct a public meeting, but you may submit a request for one by using one of the four methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

Based on the expectation of increased maritime traffic primarily due to the anticipated arrival of approximately fourteen (14) vessels affiliated with planned offshore drilling operations in the Chukchi and Beaufort Seas, temporary safety zones are proposed to ensure the safe transit of vessels within

the navigable waters of the Port of Dutch Harbor and adjacent waters extending seaward to the limits of the territorial sea.

The Coast Guard is proposing temporary safety zones due to safety concerns for personnel aboard the support vessels, mariners operating other vessels in the vicinity of Dutch Harbor, and to protect the environment. Private entities have expressed continued interest in interrupting or preventing offshore oil exploration activities in the arctic. Tactics recently employed to interrupt or prevent offshore oil exploration in the arctic include unlawfully boarding and trespassing upon vessels affiliated with drilling operations and interfering with the safe operation and navigation of these vessels. The Coast Guard has been notified that these tactics are likely to continue and has determined that such tactics will increase safety risks to vessels transiting the Port of Dutch Harbor and the adjacent territorial sea. In an effort to mitigate the safety risks and any resulting environmental damage, the Coast Guard is proposing temporary safety zones within the Port of Dutch Harbor and the adjacent territorial sea.

In evaluating this request, the Coast Guard explored relevant safety factors and considered several criteria, including, but not limited to: (1) The amount of commercial activity in and around the Port of Dutch Harbor; (2) safety concerns for personnel aboard the vessels; (3) sensitivity of the environment in the region and potential adverse affects caused by

a grounding, allision, or collision; (4) the types and volume of vessels navigating in the vicinity of the Port of Dutch Harbor; and (5) the need to allow for lawful demonstrations without endangering the safe operations of the support vessels. Vessels transiting in the vicinity of the proposed safety zones could consist of large commercial shipping vessels, fishing vessels, tugs and tows, and recreational vessels. Any group or individual intending to conduct lawful demonstrations in the vicinity of offshore exploration support vessels must do so outside of the temporary safety zones.

Results from a thorough and comprehensive examination of the five criteria identified above, in conjunction with International Maritime Organization guidelines and existing regulations, warrant establishment of the proposed temporary safety zones. The proposed regulation would significantly reduce the threat of collisions, allisions, or other incidents which could endanger the safety of all vessels operating on the navigable waters of the Port of Dutch Harbor and the adjacent territorial sea. The Coast Guard proposes temporary safety zones that will prohibit entry into the zones unless specifically authorized by the Captain of the Port, Western Alaska, or his designated on-scene representative.

Discussion of Proposed Rule

The increased maritime traffic through the Port of Dutch Harbor and the adjacent territorial sea can potentially create a

scenario where the safety of vessels transiting through this area is placed at heightened risk. The proposed temporary safety zones would surround the designated vessels while at anchor, moored or underway on the navigable waters of the Port of Dutch Harbor and the adjacent territorial sea in order to mitigate the potential safety risks associated with the increased vessel traffic. The proposed temporary safety zones will encompass the waters within 25 yards of the support vessel if the support vessel is moored or at anchor, and 100 yards if the support vessel is in transit.

The purpose of the proposed temporary safety zones is to facilitate safe navigation and protect vessels from hazards caused by increased volume of vessel traffic, including hazards that may be intentionally created, in the Port of Dutch Harbor, Broad Bay or adjacent navigable waters encompassed within the area from Cape Cheerful at 54-12.000 N 166-38.000 W north to the limits of the U.S. territorial sea, and from Princess Head at 53-59.000 N 166-25.900 W north to the limits of the U.S. territorial sea.

Enforcing temporary safety zones for each offshore exploration or support vessel while they are on the navigable waters in the Port of Dutch Harbor or the adjacent territorial sea will help prevent disruption to the continued operations of the vital and diverse commercial fleets of Dutch Harbor.

Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

Executive Orders 13563, Improving Regulation and Regulatory Review, and 12866, Regulatory Planning and Review, direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has not reviewed this regulation under Executive Order 12866.

The proposed rule is not a significant regulatory action due to the minimal impact this will have on standard vessel operations within the port of Dutch Harbor because of the limited area affected and the limited duration of the rule. The proposed safety zones are also designed to allow vessels transiting through the area to safely travel around the proposed safety zones without incurring additional costs.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule could affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit through or refuel within the Port of Dutch Harbor or adjacent waters, or transit through the waters in the near vicinity of the Port of Dutch Harbor from June 15, 2012 to July 1, 2012.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons: These safety zone restrictions are only effective from June 15, 2012 to July 1, 2012, and are limited only to waters within 25 yards of the support vessel if the support vessel is moored or at anchor, and 100 yards if the support vessel is in transit.

If you think your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would

have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies as a small entity and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LTJG Olivia Jones via the information provided in the ADDRESSES portion of this notice. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have

analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule

and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus

standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. Specifically, the proposed rule will establish a safety zone, which is categorically excluded under Commandant Instruction M16475.1D, Figure 2-1, paragraph (34)(g). A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under

ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS.

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0171.1.

2. Add § 165.T17-0198 to read as follows:

§165.T17-0198 Safety Zone; Port of Dutch Harbor; Dutch Harbor, Alaska.

(a) Location. The following areas are safety zones:

All navigable waters within a 25-yard radius of a moored or anchored offshore exploration or support vessel, or within a 100-yard radius of any underway offshore exploration or support vessel, located within the Port of Dutch Harbor, Broad Bay or adjacent navigable waters encompassed within the area from Cape Cheerful at 54-12.000 N 166-38.000 W north to the limits of the U.S. territorial

sea, and from Princess Head at 53-59.000 N 166-25.900 W north to the limits of the U.S. territorial sea.

(b) Effective date. The temporary safety zones become effective at 12:01 a.m., June 15, 2012, and terminate on 11:59 p.m., July 1, 2012, unless sooner terminated by the Captain of the Port.

(c) Regulations. The general regulations governing safety zones contained in § 165.23 apply to all vessels operating within the area described in paragraph (a).

(1) If a non-exploration or support vessel is moored or anchored and an offshore exploration or support vessel transits near them such that it places the moored or anchored vessel within the 100-yard safety zone described in paragraph (a), the moored or anchored vessel must remain stationary until the offshore exploration or support vessel maneuvers to a distance exceeding the 100-yard safety zone.

(2) All persons and vessels shall comply with the instructions of the Captain of the Port (COTP) or designated on-scene representative, consisting of commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed by the COTP's designated on-scene representative.

(3) Entry into the safety zone is prohibited unless authorized by the COTP or his designated on-scene representative. Any persons desiring to enter the safety zone must contact the designated on-scene representative on VHF channel 16 (156.800 MHz) and receive permission prior to entering.

(4) If permission is granted to transit within the safety zone, all persons and vessels must comply with the instructions of the designated on-scene representative.

(5) The COTP will notify the maritime and general public by marine information broadcast during the period of time that the safety zones are in force by providing notice in accordance with 33 CFR § 165.7.

(d) Penalties. Persons and vessels violating this rule are subject to the penalties set forth in 33. U.S.C. 1232 and 50 U.S.C. 192.

Dated: March 21, 2012

J. A. Fosdick
Captain, U. S. Coast Guard
Captain of the Port, Western Alaska

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